

ESTTA Tracking number: **ESTTA181012**

Filing date: **12/17/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | | | |
|---------|--|-------------|--------|
| Name | Medicure Inc. | | |
| Entity | Corporation | Citizenship | Canada |
| Address | 4 - 1200 Waverley Street Winnipeg, MB R3T 0P4 CANADA | | |

| | |
|----------------------|---|
| Attorney information | Scott Woldow Smith, Gambrell & Russell, LLP 1130 Connecticut Avenue, NW Suite 1130 Washington, DC 20036 UNITED STATES sdwoldow@sgrlaw.com Phone:202-263-4300 |
|----------------------|---|

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 77045559 | Publication date | 11/27/2007 |
| Opposition Filing Date | 12/17/2007 | Opposition Period Ends | 12/27/2007 |
| Applicant | Biomedicure LLC www.biomedicure.com 7933 Silverton Ave, Ste 711 San Diego, CA 92126 UNITED STATES | | |

Goods/Services Affected by Opposition

| |
|---|
| Class 005. All goods and services in the class are opposed, namely: products developed from in vitro tumor and nuclei culture from human cancer cells to be used for cytoreductive therapy for solid tumor cancer patients, namely, injectable pharmaceuticals |
|---|

Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Marks Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 2866998 | Application Date | 10/14/1999 |
| Registration Date | 07/27/2004 | Foreign Priority Date | NONE |
| Word Mark | MEDICURE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |

| | |
|----------------|---|
| Goods/Services | Class 005. First use: First Use: 2004/03/23 First Use In Commerce: 2004/03/23 PHARMACEUTICAL PREPARATIONS FOR USE IN THE TREATMENT OF CARDIAC AND VASCULAR DISEASES |
|----------------|---|

| | | | |
|----------------------|--|-----------------------|------------|
| U.S. Application No. | 76615137 | Application Date | 10/08/2004 |
| Registration Date | NONE | Foreign Priority Date | 09/13/2004 |
| Word Mark | MEDICURE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: Pharmaceutical preparations for use in the treatment of cardiovascular diseases Class 035. First use: Licensing of pharmaceutical preparations; operation of a business for others, namely, operation of a pharmaceutical research and development business. Class 042. First use: Patent licensing related to pharmaceuticals; pharmaceutical research and development, including conducting clinical trials; providing information online relating to the research and development of pharmaceutical products for treating cardiovascular diseases. | | |

| | |
|-------------|--|
| Attachments | 75821918#TMSN.gif (1 page)(bytes) 76615137#TMSN.gif (1 page)(bytes) 20071217094402.PDF (21 pages)(580553 bytes) |
|-------------|--|

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|--------------|
| Signature | /SW/ |
| Name | Scott Woldow |
| Date | 12/17/2007 |

Attorney Docket No.
034137.009

TRADEMARK

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/045,559
Published: November 27, 2007

| | | |
|-----------------|---|----------------------|
| Medicure Inc. |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. _____ |
| |) | |
| Biomedicure LLC |) | |
| |) | |
| Applicant. |) | |

Commissioner for Trademarks
Box TTAB FEE
P.O. Box 1451
Alexandria, Virginia 22313-1451

Madam:

NOTICE OF OPPOSITION

In the matter of the application of Biomedicure Ltd., for registration of the mark Biomedicure, filed on November 16, 2006, identified by application Serial No. 77/045,559, and published in the Official Gazette on November 27, 2007, Medicure Inc. believes that it will be damaged by registration of the mark shown in Serial No. 77/045,559, and hereby opposes registration.

Medicure Inc. (hereinafter “Opposer”), a Corporation of Canada, having offices located at 4 – 1200 Waverley Street, Winnipeg, Manitoba, Canada R3T 0P4, believes that it will be damaged by registration of the mark BiomediCure, Application Serial No. 77/045,559 and hereby opposes the same.

The grounds for opposition are as follows.

1. Opposer is now and has been engaged in the pharmaceutical business.
2. Opposer manufactures pharmaceuticals and is in the business of pharmaceutical research and development, conducting clinical trials, providing information relating to research and development of pharmaceuticals, licensing of pharmaceuticals and operation of a pharmaceutical research and development business.
3. Opposer is the owner of United States Registration No. 2,866,998 for the mark MEDICURE which registered on July 27, 2004, in association with “PHARMACEUTICAL PREPARATIONS FOR USE IN THE TREATMENT OF CARDIAC AND VASCULAR DISEASES.”
4. Opposer is now and has been using the MEDICURE mark in United States commerce in association with pharmaceutical preparations.
5. Opposer’s ownership of United States Trademark Reg. No. 2,866,998 has been valid and continuous and has not been abandoned.
6. Opposer is the owner of United States Application Serial No. 76/615,137 for the mark MEDICURE & Design which was filed on October 8, 2004, in association with “pharmaceutical preparations for use in the treatment of cardiovascular diseases,” in Class 5; “licensing of pharmaceutical preparations; operation of a business for others, namely, operation of a pharmaceutical research and development business,” in Class 35; and “patent licensing

related to pharmaceuticals; pharmaceutical research and development, including conducting clinical trials; providing information online relating to the research and development of pharmaceutical products for treating cardiovascular diseases,” in Class 42.

7. Opposer’s ownership of United States Trademark Application Serial No. 76/615,137 has been valid and continuous and has not been abandoned.

8. Opposer’s marks are symbolic of extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising, promotion and sales of products thereunder.

9. Notwithstanding Opposer’s rights in and to its trademark, Applicant on November 16, 2006, filed an application for registration of the mark BiomediCure.

10. The BiomediCure mark was approved for publication in association with “products developed from in vitro tumor and nuclei culture from human cancer cells to be used for cytoreductive therapy for solid tumor cancer patients, namely, injectable pharmaceuticals.”

11. The application was assigned Serial No. 77/045,559 and was published for opposition in the Official Gazette on November 27, 2007.

12. Applicant’s BiomediCure mark is displayed in standard characters.

13. Applicant’s standard character BiomediCure mark can be displayed as BIOMEDICURE, bioMEDICURE, BioMEDICURE, or BioMedicure.

14. Applicant’s mark BiomediCure, when used in connection with the goods set forth in its application, is confusingly similar to Opposer’s marks, as set forth and protected by Opposer’s above-identified trademark registration and application.

15. Purchasers of Applicant’s goods and Opposer’s goods and/or services are likely to be confused, mistaken or deceived as to the source of the goods or services. Applicant’s mark, in

association with the products identified in its trademark application, is likely to cause confusion, mistake or deception when compared to Opposer's marks.

16. Applicant's mark and Opposer's marks are similar in sound and appearance such that when used on highly similar goods and/or services there would be a likelihood of confusion, mistake or deception.

17. Applicant's mark and Opposer's marks have the same connotation and commercial impression, and the goods are nearly identical so that there would be a likelihood of such confusion, mistake or deception.

18. Applicant and Opposer use their respective marks in association with pharmaceuticals.

19. The highly similar nature of the goods and/or services accentuates the similarity between the marks and exacerbates the likelihood of confusion regarding the marks and the likelihood of confusion as to sponsorship or affiliation.

20. If Applicant is permitted to use and register its mark, BiomediCure, for the goods specified in its trademark application, confusion in the trade resulting in damage and injury to Opposer would be caused and would result by reason of the similarity between Applicant's mark and Opposer's marks.

21. Persons familiar with Opposer's marks would be likely to confuse Applicant's goods as a product made, sold, or sponsored by Opposer. Any such confusion in the trade would inevitably result in loss of sales to Opposer.

22. In addition to the harm identified in the preceding paragraphs, any defect, objection or fault found with Applicant's products marketed under the BiomediCure mark would

necessarily reflect badly upon and significantly injure the reputation which Opposer has established for its products and services.

23. Members of the healthcare profession, patient community and general public familiar with Opposer's MEDICURE products, upon encountering applicant's products under the mark BIOMEDICURE, are likely to be confused or mistaken as to whether Applicant's products emanate from Medicure Inc. or from a source connected with Medicure Inc., potentially resulting in serious injury or possibly death.

24. A current printout of information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of Trademark Registration No. 2,866,998 is attached hereto as Exhibit A and is properly made part of the record.


25. A current printout of information from the electronic database records of the United States Patent and Trademark Office showing the current status and title of Trademark Application Serial No. 76/615,137 is attached hereto as Exhibit B and is properly made part of the record.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark, and prays that registration be denied.

Please charge Deposit Account No. 02-4300 for any additional fees that may be required.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



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Robert Jeffery Veal
Attorneys for Opposer

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EXHIBIT A



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Typed Drawing

| | |
|--------------------------|--|
| Word Mark | MEDICURE |
| Goods and Services | IC 005. US 006 018 044 046 051 052. G & S: PHARMACEUTICAL PREPARATIONS FOR USE IN THE TREATMENT OF CARDIAC AND VASCULAR DISEASES. FIRST USE: 20040323. FIRST USE IN COMMERCE: 20040323 |
| Mark Drawing Code | (1) TYPED DRAWING |
| Serial Number | 75821918 |
| Filing Date | October 14, 1999 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1B |
| Published for Opposition | January 16, 2001 |
| Registration Number | 2866998 |
| Registration Date | July 27, 2004 |
| Owner | (REGISTRANT) Medicure Inc. CORPORATION CANADA 4 ? 1200 Waverley Street Winnipeg, Manitoba CANADA R3T 0P4 |
| Attorney of Record | STEPHANIE K WADE |
| Type of Mark | TRADEMARK |
| Register | PRINCIPAL |
| Live/Dead Indicator | LIVE |

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Serial Number: 75821918 Assignment Information Trademark Document Retrieval

Registration Number: 2866998

Mark (words only): MEDICURE

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-07-27

Filing Date: 1999-10-14

Transformed into a National Application: No

Registration Date: 2004-07-27

Register: Principal

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-08-02

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Medisure Inc.

Address:

Medisure Inc.
4 ? 1200 Waverley Street
Winnipeg, Manitoba R3T 0P4
Canada

Legal Entity Type: Corporation

State or Country of Incorporation: Canada

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

PHARMACEUTICAL PREPARATIONS FOR USE IN THE TREATMENT OF CARDIAC AND VASCULAR DISEASES

Basis: 1(a)

First Use Date: 2004-03-23

First Use in Commerce Date: 2004-03-23

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2005-11-10 - TEAS Change Of Owner Address Received

2005-02-11 - TEAS Change Of Correspondence Received

2004-07-27 - Registered - Principal Register

2004-05-10 - Allowed for Registration - Principal Register (SOU accepted)

2004-04-14 - Assigned To Examiner

2004-03-25 - Statement of use processing complete

2004-03-25 - Amendment to Use filed

2004-04-07 - Case File In TICSRS

2004-03-25 - PAPER RECEIVED

2003-10-31 - Extension 5 granted

2003-09-23 - Extension 5 filed

2003-09-24 - PAPER RECEIVED

2003-06-10 - FAX RECEIVED

2003-06-10 - Extension 4 granted

2003-06-10 - Reinstated

2003-06-10 - Abandonment - No use statement filed
 2003-04-04 - Extension 4 filed
 2003-04-04 - PAPER RECEIVED
 2002-10-02 - Extension 3 granted
 2002-10-02 - Extension 3 filed
 2002-10-02 - PAPER RECEIVED
 2002-04-19 - Extension 2 granted
 2002-04-10 - Extension 2 filed
 2001-07-10 - Extension 1 granted
 2001-06-27 - Extension 1 filed
 2001-04-10 - Notice of allowance - mailed
 2001-01-16 - Published for opposition
 2000-12-15 - Notice of publication
 2000-08-09 - Approved for Pub - Principal Register (Initial exam)
 2000-04-20 - Communication received from applicant
 2000-02-11 - Non-final action mailed
 2000-02-10 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

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Correspondent

Stephanie K. Wade
 Dickstein Shapiro Morin & Oshinsky LLP
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 Phone Number: 202-785-9700
 Fax Number: 202-887-0689

Domestic Representative

STEPHANIE K. WADE

EXHIBIT B



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| | |
|------------------------------|--|
| Word Mark | MEDICURE |
| Goods and Services | <p>IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations for use in the treatment of cardiovascular diseases</p> <p>IC 042. US 100 101. G & S: Patent licensing related to pharmaceuticals; pharmaceutical research and development, including conducting clinical trials; providing information online relating to the research and development of pharmaceutical products for treating cardiovascular diseases.</p> <p>IC 035. US 100 101 102. G & S: Liscensing of pharmaceutical preparations; operation of a business for others, namely, operation of a pharmaceutical research and development business.</p> |
| Mark Drawing Code | (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS |
| Design Search Code | 26.17.09 - Bands, curved; Bars, curved ; Curved line(s), band(s) or bar(s); Lines, curved |
| Serial Number | 76615137 |
| Filing Date | October 8, 2004 |
| Current Filing Basis | 44D |
| Original Filing Basis | 44D |
| Owner | (APPLICANT) Medicure Inc. CORPORATION CANADA 4 - 1200 Waverley Street Winnipeg MANITOBA R3T 0P4 CANADA |
| Attorney of | |

Record Scott D. Woldow
 Priority Date September 13, 2004
 Prior Registrations 2866998
 Type of Mark TRADEMARK, SERVICE MARK
 Register PRINCIPAL
 Live/Dead Indicator LIVE

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Serial Number: 76615137 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



(words only): MEDICURE

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2007-05-29

Filing Date: 2004-10-08

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 111

Attorney Assigned:
HOLTZ ALLISON A Employee Location

Current Location: M20 -TMO Law Office 111

Date In Location: 2007-11-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Medicure Inc.

Address:
Medicure Inc.
4 - 1200 Waverley Street

Winnipeg MANITOBA R3T 0P4
Canada

Legal Entity Type: Corporation

State or Country of Incorporation: Canada

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Pharmaceutical preparations for use in the treatment of cardiovascular diseases

No Filing Basis Claimed

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 035

Class Status: Active

Licensing of pharmaceutical preparations; operation of a business for others, namely, operation of a pharmaceutical research and development business.

No Filing Basis Claimed

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 042

Class Status: Active

Patent licensing related to pharmaceuticals; pharmaceutical research and development, including conducting clinical trials; providing information online relating to the research and development of pharmaceutical products for treating cardiovascular diseases.

No Filing Basis Claimed

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Design Search Code(s):

26.17.09 - Bands, curved; Bars, curved; Curved line(s), band(s) or bar(s); Lines, curved

Prior Registration Number(s):

2866998

Foreign Application Number: 1230104

Country: Canada

Foreign Filing Date: 2004-09-13

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-11-29 - LIE Checked Susp - To Atty For Action
2007-05-29 - Report Completed Suspension Check Case Still Suspended
2007-05-29 - Assigned To LIE
2006-11-24 - Letter of suspension mailed
2006-11-24 - Suspension Letter Written
2006-11-16 - Teas/Email Correspondence Entered
2006-11-16 - Communication received from applicant
2006-11-16 - TEAS Response to Office Action Received
2006-05-23 - Inquiry as to suspension mailed
2006-05-23 - Suspension Inquiry Written
2006-02-07 - Assigned To Examiner
2005-11-23 - Letter of suspension mailed
2005-11-22 - Suspension Letter Written
2005-11-15 - Teas/Email Correspondence Entered
2005-11-08 - Communication received from applicant
2005-11-08 - TEAS Response to Office Action Received
2005-05-13 - Non-final action mailed
2005-05-12 - Non-Final Action Written
2005-05-12 - Assigned To Examiner
2004-10-21 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Scott D. Woldow

Correspondent

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